

(4) For each research and development activity in which phosphogypsum is used, the facility shall maintain records which conform to the requirements of § 61.209(c).

(c) Phosphogypsum not intended for distribution in commerce may be lawfully removed from a stack by an owner or operator to perform laboratory analyses required by this subpart or any other quality control or quality assurance analyses associated with wet acid phosphorus production.

**§ 61.206 Distribution and use of phosphogypsum for other purposes.**

(a) Phosphogypsum may not be lawfully removed from a stack and distributed or used for any purpose not expressly specified in § 61.204 or § 61.205 without prior EPA approval.

(b) A request that EPA approve distribution and/or use of phosphogypsum for any other purpose must be submitted in writing and must contain the following information:

(1) The name and address of the person(s) making the request.

(2) A description of the proposed use, including any handling and processing that the phosphogypsum will undergo.

(3) The location of each facility, including suite and/or building number, street, city, county, state, and zip code, where any use, handling, or processing of the phosphogypsum will take place.

(4) The mailing address of each facility where any use, handling, or processing of the phosphogypsum will take place, if different from paragraph (b)(3) of this section.

(5) The quantity of phosphogypsum to be used by each facility.

(6) The average concentration of radium-226 in the phosphogypsum to be used.

(7) A description of any measures which will be taken to prevent the uncontrolled release of phosphogypsum into the environment.

(8) An estimate of the maximum individual risk, risk distribution, and incidence associated with the proposed use, including the ultimate disposition of the phosphogypsum or any product in which the phosphogypsum is incorporated.

(9) A description of the intended disposition of any unused phosphogypsum.

(10) Each request shall be signed and dated by a corporate officer or public official in charge of the facility.

(c) The Assistant Administrator for Air and Radiation may decide to grant a request that EPA approve distribution and/or use of phosphogypsum if he determines that the proposed distribution and/or use is at least as protective of public health, in both the short term and the long term, as disposal of phosphogypsum in a stack or a mine.

(d) If the Assistant Administrator for Air and Radiation decides to grant a request that EPA approve distribution and/or use of phosphogypsum for a specified purpose, each of the following requirements shall be satisfied:

(1) The owner or operator of the stack from which the phosphogypsum is removed shall determine annually the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as provided by § 61.207.

(2) All phosphogypsum distributed in commerce by the owner or operator of a phosphogypsum stack, or by a distributor, retailer, or reseller, or purchased by the end-user, shall be accompanied at all times by certification documents which conform to the requirements § 61.208.

(3) The end-user of the phosphogypsum shall maintain records which conform to the requirements of § 61.209(c).

(e) If the Assistant Administrator for Air and Radiation decides to grant a request that EPA approve distribution and/or use of phosphogypsum for a specified purpose, the Assistant Administrator may decide to impose additional terms or conditions governing such distribution or use. In appropriate circumstances, the Assistant Administrator may also decide to waive or modify the recordkeeping requirements established by § 61.209(c).

**§ 61.207 Radium-226 sampling and measurement procedures.**

(a) Before removing phosphogypsum from a stack for distribution to commerce pursuant to § 61.204, § 61.205, or § 61.206, the owner or operator of a phosphogypsum stack shall measure the average radium-226 concentration

at the location in the stack from which phosphogypsum will be removed. Measurements shall be performed for each such location prior to the initial distribution in commerce of phosphogypsum removed from that location and at least once during each calendar year while distribution of phosphogypsum removed from the location continues.

(b) The radium-226 concentration shall be determined in accordance with the analytical procedures described in 40 CFR part 61, appendix B, Method 114.

(c) Phosphogypsum samples shall be taken at regularly spaced intervals across the surface of the location in the phosphogypsum stack from which phosphogypsum will be removed.

(d) The minimum number of samples considered necessary to determine a representative average radium-226 concentration for the location on the stack to be analyzed shall be calculated as follows:

(1) Obtain the measured mean and standard deviation of 30 regularly spaced phosphogypsum samples.

(2) Solve the following equation for the number of samples required to achieve a 95% confidence interval:

$$e \geq \frac{\tau(n)s}{x/\sqrt{n}}$$

where:

$\tau$  is the students- $\tau$  distribution,

$s$  = measured standard deviation of the radium-226 concentration,

$x$  = measured mean of the radium-226 concentration,

$e$  = allowable error (expressed as a fraction), and

$n$  = number of samples.

See Reference 1 of Method 115 in appendix B to part 61 for a detailed discussion of this statistical technique.

(3) If the number of samples required is greater than 30, then obtain and analyze the necessary number of additional samples and recalculate the average radium-226 concentration using the combination of the results of the original 30 samples and additional samples. The additional samples shall also be regularly spaced across the surface of the location in the phosphogypsum stack from which phosphogypsum will be removed.

#### § 61.208 Certification requirements.

(a)(1) The owner or operator of a stack from which phosphogypsum will be removed and distributed in commerce pursuant to § 61.204, § 61.205, or § 61.206 shall prepare a certification document for each quantity of phosphogypsum which is distributed in commerce which includes:

(i) The name and address of the owner or operator;

(ii) The name and address of the purchaser or recipient of the phosphogypsum;

(iii) The quantity (in pounds) of phosphogypsum sold or transferred;

(iv) The date of sale or transfer;

(v) A description of the intended end-use for the phosphogypsum;

(vi) The average radium-226 concentration, in pCi/g, of the phosphogypsum, as determined pursuant to § 61.207; and

(vii) The signature of the person who prepared the certification.

(2) The owner or operator shall retain the certification document for five years from the date of sale or transfer, and shall produce the document for inspection upon request by the Administrator, or his authorized representative. The owner or operator shall also provide a copy of the certification document to the purchaser or recipient.

(b)(1) Each distributor, retailer, or reseller who purchases or receives phosphogypsum for subsequent resale or transfer shall prepare a certification document for each quantity of phosphogypsum which is resold or transferred which includes:

(i) The name and address of the distributor, retailer, or reseller;

(ii) The name and address of the purchaser or recipient of the phosphogypsum;

(iii) The quantity (in pounds) of phosphogypsum resold or transferred;

(iv) The date of resale or transfer;

(v) A description of the intended end-use for the phosphogypsum;

(vi) A copy of each certification document which accompanied the phosphogypsum at the time it was purchased or received by the distributor, retailer, or reseller; and

(vii) The signature of the person who prepared the certification.